

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

GEORGE PATRICK MERLINO, JR.,

Plaintiff,

v.

Case No. 05-73608  
Honorable Patrick J. Duggan

MICHIGAN DEPARTMENT OF  
CORRECTIONS, MICHIGAN  
PAROLE BOARD, JOHN RUBITSCHUN,  
JOHN J. REMILLET, ROBERT WILSON,  
WAYNE GROAT, ROBERT OWENS,  
and MELISSA REDMOND,

Defendants.

---

**ORDER GRANTING CERTIFICATE OF GOOD FAITH APPEAL**

At a session of said Court, held in the U.S.  
District Courthouse, Eastern District  
of Michigan, on January 25, 2006 .

PRESENT: THE HONORABLE PATRICK J. DUGGAN  
U.S. DISTRICT COURT JUDGE

On November 18, 2005, this Court entered an opinion and order dismissing Plaintiff's *pro se* civil rights complaint for declaratory and injunctive relief brought pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff's "Motion for Certificate of Appealability." Because Plaintiff is appealing a dismissal of an action brought pursuant to Section 1983, it is not necessary for Plaintiff to obtain a "Certificate of Appealability." However, Section 1915(a)(3) provides that "[a]n appeal may not be

taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.”<sup>1</sup> 28 U.S.C. § 1915(a)(3). In the context of Section 1915, “good faith” simply means “not frivolous.” *Coppedge v. United States*, 369 U.S. 438, 445, 92 S. Ct. 917, 921 (1962). An appeal is taken in good faith if it presents a legal issue that is arguable on its merits. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). In its opinion and order of November 18, 2005, this Court dismissed Plaintiff’s complaint because Plaintiff failed to state a claim upon which relief may be granted. Although continuing to believe that Plaintiff’s complaint fails to state a cause of action and therefore is subject to dismissal, this Court does not believe that Plaintiff should be denied his opportunity to seek appellate review. Therefore, this Court believes that Plaintiff’s appeal is “taken in good faith.” 28 U.S.C. § 1915(a)(3).

Accordingly,

**IT IS ORDERED** that Plaintiff is **GRANTED** a certificate of good faith appeal pursuant to 28 U.S.C. § 1915(a)(3).

s/PATRICK J. DUGGAN  
UNITED STATES DISTRICT JUDGE

Copy to:  
George Patrick Merlino, #204575  
Parnall Correctional Facility  
1780 East Parnall Road  
Jackson, MI 49201-7139

---

<sup>1</sup>On November 30, 2005, Plaintiff filed a motion for reconsideration, which this Court denied on January 24, 2006. This Certificate of Good Faith Appeal applies to the Court’s order denying Plaintiff’s Motion for reconsideration, as well as the Court’s November 18, 2005 Order of Dismissal.